

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: Axel E. Elfner Confirmation No.: 3099
Serial No.: 10/791,566 Group Art Unit: 2145
Filed: 03/02/2004 Examiner: Pollack, Melvin H.

Title: FACILITATING THE SENDING OF MAIL FROM A RESTRICTED COMMUNICATIONS NETWORK

CERTIFICATE OF ELECTRONIC TRANSMISSION

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Rosalind Q. Spiller

Rosalind Q. Spiller

Date of Signature: July 24, 2009.

To: Mail Stop Appeal Briefs—Patents
Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

Dear Sir:

APPELLANTS' APPEAL BRIEF TO THE BOARD OF
PATENT APPEALS AND INTERFERENCES

Appellant is appealing from a Final Rejection dated , February 27, 2009 rejecting claims 1-3 and 5-12, all the claims being considered in the above-identified application. A Notice of Appeal and payment therefor, was timely filed on April 24, 2009, and was received in the U.S. Patent and Trademark Office on April 24, 2009, with an Appeal Brief due by July 24, 2009 with a one-month extension of time. This Brief is accompanied by a transmittal letter authorizing the

charging of Appellant's Deposit Account for payment of the requisite fee set forth in 37 C.F.R. §41.20(b)(2), and a Request for One-Month Extension of Time and authorization for payment thereof. Therefore, this Appeal Brief is being timely filed.

REAL PARTY IN INTEREST

This application is assigned to International Business Machines Corporation by virtue of an assignment executed by the inventor on February 24, 2004, and recorded with the United States Patent and Trademark Office at reel 014517, frame 0640, on April 14, 2004. Therefore, the real party in interest is International Business Machines Corporation.

RELATED APPEALS AND INTERFERENCES

To the knowledge of Appellant, Appellant's undersigned legal representative, or the assignee, there are no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

STATUS OF CLAIMS

This patent application was filed on March 2, 2004, with the U.S. Patent and Trademark Office. As filed, the application included twenty-nine (29) claims, of which four (4) were independent claims (i.e., claims 1, 13, 21 and 22).

On August 20, 2007, a first Office Action was mailed that included a rejection of claims 1-29. In particular, claims 1-6, 8, 10, 11, 13-18, 20-27 and 29 were rejected under 35 U.S.C. §103, as allegedly obvious over Afergan et al. (U.S. Patent Application Publication No.

2004/0010601) in view of Yoshida (U.S. Patent Application Publication No. 2004/0049546); claim 9 was rejected as obvious over Afergan and Yoshida as applied to claims 1 and 8 and further in view of Mizuno et al. (U.S. Patent Application Publication No. 2006/0031927); and claim 12 was rejected as obvious over Afergan and Yoshida as applied to claims 1, 8 and 11, and further in view of Clarke et al. (U.S. Patent No. 7,043,240).

In response to this Office Action, Appellant filed an Amendment and Response to Office Action on November 17, 2007, in which claims 22, 27 and 29 were amended. No claims were added or canceled. Claims 1-29 remained pending.

On February 6, 2008, a final Office Action was mailed that included a rejection of claims 1-29. In particular, claims 1-6, 8, 10, 11, 13-18, 20-27 and 29 were rejected under 35 U.S.C. §103, as allegedly obvious over Afergan et al. (U.S. Patent Application Publication No. 2004/0010601) in view of Yoshida (U.S. Patent Application Publication No. 2004/0049546); claim 9 was rejected as obvious over Afergan and Yoshida as applied to claims 1 and 8 and further in view of Mizuno et al. (U.S. Patent Application Publication No. 2006/0031927); and claim 12 was rejected as obvious over Afergan and Yoshida as applied to claims 1, 8 and 11, and further in view of Clarke et al. (U.S. Patent No. 7,043,240).

In response to this final Office Action, Appellant filed an Amendment and Response to Office Action on April 7, 2008, in which claims 13-29 were canceled. No claims were amended or added. Claims 1-12 remained pending.

On May 1, 2008, an Advisory Action was mailed that indicated that for purposes of appeal, the proposed amendments would be entered.

In response to this Advisory Action, Appellant filed an Amendment and Response to Final Office Action Accompanying a Request for Continued Examination on June 6, 2008, in which claims 1, 5 and 6 were amended, and claim 4 was canceled. No claims were added. Claims 1-3 and 5-12 remained pending.

On August 15, 2008, a non-final Office Action was mailed that included a rejection of claims 1-3 and 5-12. In particular, claims 1-3, 5, 6, 8, 10 and 11 were rejected under 35 U.S.C. §103, as allegedly obvious over Afergan et al. (U.S. Patent Application Publication No. 2004/0010601) in view of Yoshida (U.S. Patent Application Publication No. 2004/0049546); claim 7 was rejected as obvious over Afergan and Yoshida as applied to claims 1 and 6 and further in view of Banister et al. (U.S. Patent No. 7,219,131); claim 9 was rejected as obvious over Afergan and Yoshida as applied to claims 1 and 8 and further in view of Mizuno et al. (U.S. Patent Application Publication No. 2006/0031927); and claim 12 was rejected as obvious over Afergan and Yoshida as applied to claims 1, 8 and 11, and further in view of Clarke et al. (U.S. Patent No. 7,043,240).

In response to this Office Action, Appellant filed a Response to Office Action on November 17, 2008, in which no claims were amended, canceled or added. Claims 1-3 and 5-12 remained pending.

On February 27, 2009, a final Office Action was mailed that included a rejection of claims 1-3 and 5-12. In particular, claims 1-3, 5, 6, 8, 10 and 11 were rejected under 35 U.S.C. §103, as allegedly obvious over Afergan et al. (U.S. Patent Application Publication No. 2004/0010601) in view of Yoshida (U.S. Patent Application Publication No. 2004/0049546); claim 7 was rejected as obvious over Afergan and Yoshida as applied to claims 1 and 6 and further in view of Banister et al. (U.S. Patent No. 7,219,131); claim 9 was rejected as obvious over Afergan and Yoshida as applied to claims 1 and 8 and further in view of Mizuno et al. (U.S. Patent Application Publication No. 2006/0031927); and claim 12 was rejected as obvious over Afergan and Yoshida as applied to claims 1, 8 and 11, and further in view of Clarke et al. (U.S. Patent No. 7,043,240).

In response, Appellant filed a Notice of Appeal on April 24, 2009.

Therefore, the status of the claims is as follows:

Claims allowed—None.

Claims objected to—None.

Claims rejected—1-3 and 5-12; and

Claims canceled—4 and 13-29.

Appellant is appealing the rejection of claims 1-3 and 5-12, with each of the following claims being separately argued: 1, 2 and 5-12. Claim 3 stands or falls with claim 2 as depending therefrom.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1, the sole pending independent claim, recites a method of facilitating the sending of mail from a restricted communications network. The method comprises automatically checking periodically by a communications unit (104, FIG. 1) external to a restricted communications network (108, FIG. 1) whether mail of the restricted communications network is to be sent. See step 520, FIG. 5B, and paragraphs 0022, 0023 and 0031 of the application. The method further comprises retrieving by the communications unit the mail from the restricted communications network, in response to there being mail to be sent. See step 524, FIG. 5B, and paragraphs 0022, 0023 and 0032. The automatically checking comprises sending a request from a program (Mail Runner 210, FIG. 2A) of the communications unit to a program (Mail Depot 206, FIG. 2A, and paragraph 0022) of the restricted communications network inquiring as to whether there is mail to be sent, and wherein the program of the restricted communications network checks a data structure (Local Depot File 206, FIG. 2A, and paragraph 0021) to determine whether there is mail in the data structure to be sent.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. The final Office Action rejected claims 1-3, 5, 6, 8, 10 and 11, under 35 U.S.C. §103, as allegedly obvious over Afergan et al. (U.S. Patent Application Publication No. 2004/0010601) in view of Yoshida (U.S. Patent Application Publication No. 2004/0049546).

2. The final Office Action also rejected claim 7 as allegedly obvious over Afergan and Yoshida as applied to claims 1 and 6 and further in view of Banister et al. (U.S. Patent No. 7,219,131).

3. The final Office Action also rejected claim 9 as allegedly obvious over Afergan and Yoshida as applied to claims 1 and 8 and further in view of Mizuno et al. (U.S. Patent Application Publication No. 2006/0031927).

4. The final Office Action also rejected claim 12 as allegedly obvious over Afergan and Yoshida as applied to claims 1, 8 and 11, and further in view of Clarke et al. (U.S. Patent No. 7,043,240).

ARGUMENT

I. Rejection under 35 U.S.C. §103 over Afergan in view of Yoshida.

Claims 1-3, 5, 6, 8, 10 and 11:

Non-Analogous Art

Appellant maintains that each of Afergan and Yoshida is improperly cited against the present application as non-analogous art.

The determination that a given reference is non-analogous art involves two steps, looking at the reference alone. *Heidelberger Druckmaschinen AG v. Hantscho Commercial Products Inc.*, 30 U.S.P.Q.2d 1377, 1379 (Fed. Cir. 1994); *In re Wood and Eversole*, 599 F.2d 1032, 202

U.S.P.Q. 171, 174 (CCPA 1979). The MPEP also describes the two-part test similarly. Thus, each reference must be addressed by itself to determine whether it qualifies as analogous art.

First, the reference is reviewed alone as to whether it is within the field of the Applicants' endeavor. *Id.* Second, if the reference is *not* in the field of endeavor, then a determination is made, again looking at the reference alone, as to whether the reference is reasonably pertinent to the particular problem the inventor sought to solve. *Id.*

In determining what the field of endeavor is, courts have looked to the field of endeavor set out in a patent or patent application. See, e.g., *In re Wood and Eversole*, 599 F.2d 1032, 202 U.S.P.Q. 171 (CCPA 1979).

In the present case, contrary to the alleged field/problem at page 3 of the final Office Action, the field of endeavor is set out in numbered paragraph 0001 of the present application as being generally related to electronic mail delivery, and in particular, to facilitating the sending of email from a restricted communications network. The field of endeavor is also echoed in the preamble of claim 1, for example.

Appellant submits that Afergan is not within the field of Appellant's endeavor, as it is not related to sending mail from a restricted communications network. In Afergan, the requests originate from users and flow to the content server. There is no indication in Afergan that the user requests come from a restricted network. Thus, Afergan is not within the field of Appellant's endeavor.

Since Afergan fails the first part of the test, we move on to the second step of the non-analogous art test; that is, it must be determined whether the reference is reasonably pertinent to the particular problem the inventor sought to solve. As set forth in the Background section of the present application, and contrary to the alleged problem at page 3 of the final Office Action, the problem is that of restricted communications networks, in which standard mechanisms for sending email are disabled, requiring manual intervention to send email out of the restricted network. Appellant submits the final Office Action improperly broadens the problem without considering what is specifically set forth in the present application. Appellant submits that Afergan is not reasonably pertinent to the properly phrased problem, since it is concerned with shielding the content server (at the other end) from unwanted inbound access, and not with getting email out of a restricted network. There is no disclosure in Afergan, for example, regarding the user requests coming out of a restricted network, standard sending protocols being disabled, or manual intervention to get user requests (much less email) out as a result. As a consequence, Appellant submits that Afergan is not reasonably pertinent to the problem the inventor sought to solve.

Therefore, Appellant submits that Afergan is improperly cited against the present application as non-analogous art.

Likewise, Appellant submits that Yoshida is not within the field of Appellant's endeavor, as it is not concerned with sending email out of a restricted network. Instead, it is concerned with the receiving end of email, getting it to the recipients.

Moving onto the second step, Appellant submits Yoshida is not reasonably pertinent to the problem of restricted communications networks, in which standard mechanisms for sending email are disabled, requiring manual intervention to send email out of the restricted network. As noted above, Yoshida is concerned with receiving email, not sending it or sending it out of a restricted network.

Therefore, Appellant submits Yoshida is improperly cited as non-analogous art.

Moving on to the substantive rejection, claims 1-3, 5, 6, 8, 10 and 11 stand rejected under 35 U.S.C. §103 as being obvious over Afergan in view of Yoshida. Appellant respectfully submits that the rejection of these claims is erroneous and respectfully request reversal of this rejection for at least the reasons set forth below.

Claim 1 recites a method of facilitating the sending of mail from a restricted communications network. The method comprises automatically checking periodically by a communications unit external to a restricted communications network whether mail of the restricted communications network is to be sent. The method further comprises retrieving by the communications unit the mail from the restricted communications network, in response to there being mail to be sent, the automatically checking comprising sending a request from a program of the communications unit to a program of the restricted communications network inquiring as to whether there is mail to be sent, and the program of the restricted communications network checking a data structure to determine whether there is mail in the data structure to be sent.

Afergan teaches routing user requests for content to a shield (group of content delivery servers), then from the shield through a firewall to the server able to access the content. See, e.g., the Summary of Afergan. The purpose is to protect the content server from incoming attacks.

Yoshida teaches a mail system where a central mail server receives mail for multiple client domains. A client-side mail server at each domain checks for mail intended for its clients at the central mail server. The central server authenticates the client server, then sends the mail, which the client-side mail server then distributes to individual users.

As an initial matter, Appellant submits that one of ordinary skill in the art would not be motivated to combine Yoshida with Afergan as alleged, since Afergan focuses on shielding the content server from *incoming* requests in the form of an attack (in the context of mail, protecting from a deluge of incoming mail in the form of an attack), while Yoshida focuses on disseminating *outgoing* mail from a central mail server.

Moving to the substantive aspects, against the claim 1 aspect of “automatically checking periodically,” the Office Action cites to Afergan at numbered paragraphs 20-24. However, the term “automatically” and variants thereof is not actually used anywhere in Afergan. Also, while the term “periodically” is used in Afergan numbered paragraphs 21 and 23, the use in paragraph 21 is in conjunction with periodic checking of IP addresses in a network to create maps, not checking for mail or even other content.

The final Office Action at page 4, section 10, alleges that “CDN’s constantly (automatically and periodically) request information from the internal units (origin servers)

based on end-user requests.” Even if one assumed this to be true, Appellant does not acquiesce thereto, the CDN’s only request information in response to user requests, which is by nature random and thereby include times when there are no user requests. Thus, any alleged requesting of information by the CDN’s is not “automatically checking periodically” as recited in claim 1.

The use in paragraph 23 speaks to metadata being periodically provided to servers within the main cloud of Afergan FIG. 1 from left to right, i.e., from the protected server outward. There is no checking involved in the process of disseminating the metadata, which is simply pushed into the cloud from the outside, then from left to right. Aside from the fact that the main cloud is not a restricted network, this is the opposite direction of claim 1, wherein an external communications unit checks to see if mail needs to come out of the restricted communications network. In short, Appellant submits Afergan numbered paragraph 23 teaches periodic pushing, not periodic checking. Moreover, the metadata originates from outside the cloud by a content provider, and there is no indication of the pushing being automatic in nature.

In addition, Applicant reviewed the use of the term “restricted” and variants in Afergan. The term is used in numbered paragraph 28; servers located in another region of a content delivery network can access the shielded origin server “under restricted, secure circumstances.” Thus, the servers are part of the same network, whereas claim 1 recites that the communications unit is external to the network.

The final Office Action alleges at page 5 that the CDN’s are in different networks from the from the origin server. However, the description of FIG. 1 in Afergan is unclear as to how origin server 115 relates to the other portions of the figure since it is not even mentioned.

FIG. 4A merely shows the flow of content with no indicated boundaries or networks. Paragraph 22 merely speaks to identifying content for delivery by directing to a domain, but a network can clearly have multiple domains. Similarly, nothing in paragraphs 28-29 or 38-39 indicates that CDN's are in a different network than the origin server.

Against the aspect of mail within the restricted network needing to be sent, the Office Action cites to paragraphs 23 and 24 of Afergan. However, as noted above, paragraph 23 describes the dissemination of metadata originating from outside through the various servers in a top-down fashion. There is no checking from downstream to see if something needs to come down from upstream. Paragraph 24 speaks to end user requests for content coming into the edge servers, then the edge servers seeking that content if they do not have it, and likewise the shield seeking it from the protected server if they do not have it. Thus, the requests flow into the restriction. In the context of a mail server, this analogizes to restrictions on incoming mail, not outgoing mail, let alone checking for such outgoing mail from outside.

Against the retrieving aspect of claim 1, the Office Action cites to paragraphs 28 and 21-24 of Afergan. However, as remarked above, the focus of Afergan on protecting from incoming attacks indicates that the edge servers do not *retrieve* the content; rather, they *receive* the content from the shield servers who are the ones allowed to access the content server. This focus on incoming is borne out with respect to mail in the last four lines of Afergan paragraph 28, wherein it is taught that Web servers (including mail servers) are protected “from unauthorized **intrusion**” (emphasis added).

Appellant submits that Yoshida fails to remedy the shortcoming of Afergan with respect to mail coming out of a network with outgoing restrictions. Instead, Afergan restricts requests or mail that is incoming to the server. As shown in FIG. 1 of Yoshida, the firewalls are on the client side, not the central server side. Thus, Yoshida also does not address mail coming out of a network with outgoing restrictions; any restrictions are on the receiving side.

The final Office Action, however, alleges that the Yoshida server is a restricted network using proxies and authentication to protect itself from the Internet. Again, assuming such protection is disclosed, it is incoming to the alleged “true restricted network.” There is no disclosure of any outgoing restrictions on the central mail server.

With regard to the wherein clause of claim 1, a careful review of the cited art reveals that while Yoshida does mention a data structure in numbered paragraph 0026, this is with respect to authentication of the client-side server by the central server prior to email transfer from the central server to the client-side server. There is no disclosure, teaching or suggestion in Afergan or Yoshida, or their combination, regarding storing mail in a data structure, or checking a data structure to determine whether there is mail (or any other content) in the data structure to be sent out of the communications network.

Appellant submits that the combination of Afergan and Yoshida fails to remedy the noted shortcomings thereof above.

Therefore, for at least the reasons noted above, Appellant submits that claim 1 cannot be obviated over Afergan in view of Yoshida.

Claim 2

With regard to claim 2, the final Office Action cites to Afergan at paragraphs 0028-0029 and 0032-0034. While paragraphs 0028-0029 are silent regarding connection directions and ports, paragraph 0032 is quite clear that IP address access control lists are used at all ports (block all but predetermined IP addresses) with upstream firewalls, as well as any unnecessary ports being blocked. Appellant submits that one skilled in the art would understand “available port” in claim 2 to mean one that is not blocked. Thus, Appellant submits that the blocked/restricted ports of Afergan are not available as claimed in claim 2. See the present specification at, for example, numbered paragraph 0022 (“.mailrunner 210 makes an inbound TCP/IP connection from the forwarding network to the restricted network over an available port, i.e., a port that is not blocked by a firewall.”)

Appellant submits that neither Yoshida, nor the combination thereof with Afergan, remedies the noted shortcomings with respect to Afergan.

Therefore, for at least the reasons noted above, Appellant submits claim 2 is not obvious over Afergan in view of Yoshida.

Claim 5

Against claim 5, the final Office Action cites to Afergan at paragraph 0028. However, Appellant submits there is nothing in the cited paragraph regarding sending mail out of an outgoing restricted communications network, the mail coming from a data structure. Instead, the cited paragraph merely speaks to shielding servers from incoming traffic.

Appellant submits that neither Yoshida, nor the combination thereof with Afergan, remedies the noted shortcomings with respect to Afergan.

Therefore, for at least the reasons noted above, Appellant submits claim 5 is not obvious over Afergan in view of Yoshida.

Claim 6

Against claim 6, the final Office Action cites to Afergan at paragraph 0028. However, there is no data structure mentioned therein, nor providing mail to such a data structure. One example of a server type protectable by the incoming shield of Afergan given in paragraph 0028 is a database, but that is separate from the example of a mail server.

Appellant submits that neither Yoshida, nor the combination thereof with Afergan, remedies the noted shortcomings with respect to Afergan.

Therefore, for at least the reasons noted above, Appellant submits claim 6 is not obvious over Afergan in view of Yoshida.

Claim 8

Against claim 8, the final Office Action cites to Afergan at paragraphs 0028, 0023 and 0024. However, Appellant submits there is nothing in paragraph 0028 regarding forwarding content, let alone forwarding mail as recited. In addition, the use in paragraph 0023 speaks to metadata being periodically provided to servers within the main cloud of Afergan FIG. 1 from left to right, i.e., from the protected server outward. There is no mail forwarding involved in the

process of disseminating the *metadata*, which is simply pushed into the cloud from the outside, then from left to right. Aside from the fact that the main cloud is not a restricted network, this is the opposite direction of claim 1, wherein an external communications unit checks to see if mail needs to come out of the restricted communications network. In short, Appellant submits Afergan numbered paragraph 0023 teaches periodic pushing of metadata. Moreover, the metadata originates from outside the cloud by a content provider, and there is no indication of the pushing being automatic in nature.

Appellant submits that neither Yoshida, nor the combination thereof with Afergan, remedies the noted shortcomings with respect to Afergan.

Therefore, for at least the reasons noted above, Appellant submits claim 8 is not obvious over Afergan in view of Yoshida.

Claim 10

Against claim 10, the final Office Action again cites to Afergan at paragraphs 0023 and 0024. However, again the cited paragraphs speak to metadata, not the content, let alone mail. Further, the flow of the requests in paragraph 0024 is into the incoming restriction, not flowing out from the restricted network as in claim 10.

Appellant submits that neither Yoshida, nor the combination thereof with Afergan, remedies the noted shortcomings with respect to Afergan.

Therefore, for at least the reasons noted above, Appellant submits claim 10 is not obvious over Afergan in view of Yoshida.

Claim 11

Against claim 11, the final Office Action cites to Afergan at paragraphs 0021-0025. However, it is clear from paragraphs 0024 and 0025 of Afergan that the content is accessed on a per-file basis according to the particular request being processed. Thus, there is no parsing of the content, let alone parsing mail.

The final Office Action at page 5, section 14, alleges that content access in Afergan on a per-file basis is somehow equivalent to parsing mail into multiple messages. However, mail is delivered in bulk, then separated out. Such is not the case in Afergan, where the content sits on the server and is accessed according by file. There is no delivery, for example, of bulk content files that are then parsed into the individual files.

Appellant submits that Yoshida fails to remedy the noted shortcomings with respect to Afergan.

Therefore, for at least the reason noted above, Appellant submits that claim 11 cannot be obviated over Afergan in view of Yoshida.

II. Rejection under 35 U.S.C. §103 over Afergan and Yoshida, and further in view of Banister

Non-Analogous Art

Banister, like Yoshida, is concerned with the receiving end—trying to reduce emails being bounced by a recipient's email server. Banister is not concerned with sending email out of a restricted network, and, thus, is not within Appellant's field of endeavor.

Moving on to the second step of the non-analogous art test for Banister, whether it is reasonably pertinent to the problem of restricted communications networks, in which standard mechanisms for sending email are disabled, requiring manual intervention to send email out of the restricted network, numbered paragraph 0012 of Banister describes a conventional network setup in which email flows freely out of the network, but bringing files into the network is difficult. Banister is concerned with the duplication of files from outside the network to inside so that users can access the same. Thus, Applicant submits Banister is not reasonably pertinent to the problem.

Therefore, Applicant submits Banister is improperly cited as non-analogous art.

Claim 7

Against claim 7, the final Office Action cites to Banister. Banister describes a conventional network setup in which email flows freely out of the network, but bringing files into the network is difficult. Banister is concerned with the duplication of files from outside the network to inside so that users can access the same.

More specifically, the final Office Action cites, in part, to Banister's queuing procedure at column 10, line 50–column 12, line 40. However, the cited section teaches that messages through the system have filters applied that put them into particular delivery queues. There is no teaching or suggestion that the program addressing queues puts mail into a data structure.

FIGs. 1A and 1B of Banister, and the text at section 2.2 (columns 5-7) describes the system. The focus of the system is the presence of filters for the messages. There is no disclosure, teaching or suggestion of outgoing restrictions on the messages. Thus, any alleged queue programs in Banister cannot be within an outgoingly restricted communications network. The same is true of any alleged “another program” or “one or more communications units” of the restricted communications network.

Appellant submits that neither the combination of cited art, nor Afergan or Yoshida alone remedies the noted shortcomings with respect to Banister.

Therefore, for at least the reasons noted above, Appellant submits claim 7 is not obvious over Afergan in view of Yoshida and Banister.

III. Rejection under 35 U.S.C. §103 over Afergan and Yoshida, and further in view of Mizuno et al.

Claim 9

Against claim 9, the final Office Action cites to Mizuno at paragraphs 31-34.

As an initial manner, Mizuno is not concerned with email, but data. Thus, the cited paragraphs 31-34 cannot teach one or more receivers being an intended recipient of email.

Further, firewalls within companies A, B in paragraph 0027 of Mizuno “protects the network from attack from the outside? ” Thus, the network is not externally restricted, but internally restricted.

Appellant submits that neither the combination of cited art, nor Afergan or Yoshida remedies the noted shortcomings with respect to Mizuno.

Therefore, for at least the reasons noted above, Appellant submits claim 9 is not obvious over Afergan in view of Yoshida and Mizuno.

IV. Rejection under 35 U.S.C. §103 over Afergan and Yoshida, in further view of Clarke et al.

Claim 12

Non-Analogous Art

Clarke is concerned with sending alerts to mobile devices regarding mail received. Mail flows freely, and, thus, Clarke is not concerned with sending email out of a restricted network. As such, Clarke is not within the field of Applicant's endeavor.

Clarke is also not reasonably pertinent to the problem of restricted communications networks, in which standard mechanisms for sending email are disabled, requiring manual intervention to send email out of the restricted network. No such problem exists in Clarke,

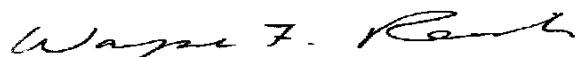
which focuses on mobile alerts for email received. Thus, Clarke is not reasonably pertinent to the problem sought to be solved by Applicant.

Therefore, Applicant submits Clarke is improperly cited as non-analogous art.

CONCLUSION

In conclusion, Appellant does not acquiesce to any allegations or characterizations made in the final Office Action, including, for example, characterizations of the cited art. Further, Appellant submits that none of claims 1-3, 5, 6, 8, 10 and 11 is obvious over Afergan, that claim 7 is not obvious over Afergan and Yoshida in view of Banister et al., that claim 9 is not obvious over Afergan and Yoshida and further in view of Mizuno et al.; and that claim 12 is not obvious over Afergan and Yoshida, and further in view of Clarke et al. Therefore, Appellant submits that the final Office Action should be reversed in all respects.

Respectfully submitted,



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Dated: July 24, 2009.

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CLAIMS APPENDIX

1. (Previously Presented) A method of facilitating the sending of mail from a restricted communications network, said method comprising:

automatically checking periodically by a communications unit external to a restricted communications network whether mail of the restricted communications network is to be sent; and

retrieving by the communications unit the mail from the restricted communications network, in response to there being mail to be sent;

wherein the automatically checking comprises sending a request from a program of the communications unit to a program of the restricted communications network inquiring as to whether there is mail to be sent, and wherein the program of the restricted communications network checks a data structure to determine whether there is mail in the data structure to be sent.

2. (Original) The method of claim 1, wherein the automatically checking comprises sending a request from a program of the communications unit to a program of the restricted communications network inquiring as to whether there is mail to be sent, and wherein the sending of the request is via an inbound connection from the communications unit to the restricted communications network over an available port.

3. (Original) The method of claim 2, wherein the retrieving comprises having the program of the restricted communications network serve the mail to the program of the communications unit via the available port.

4. (Canceled)

5. (Previously Presented) The method of claim 1, wherein the retrieving comprises having the program of the restricted communications network provide the mail in the data structure to the communications unit.

6. (Previously Presented) The method of claim 1, further comprising providing the mail to the data structure.

7. (Original) The method of claim 6, wherein the providing is performed by a queue program of the restricted communications network, and wherein the queue program receives the mail from another program of the restricted communications network, said another program capable of receiving mail from one or more communications units of the restricted communications network.

8. (Original) The method of claim 1, further comprising forwarding the mail from the communications unit to one or more receivers.

9. (Original) The method of claim 8, wherein a receiver of the one or more receivers comprises an intended recipient of the mail.

10. (Original) The method of claim 8, wherein a receiver of the one or more receivers comprises an intermediary to facilitate forwarding the mail to an intended recipient of the mail.

11. (Original) The method of claim 8, wherein the forwarding comprises parsing the mail into one or more messages and sending the one or more messages to the one or more receivers.

12. (Original) The method of claim 11, wherein the manner in which a message is sent to a receiver is dependent on the type of receiver.

13-29. (Canceled)

Axel E. Elfner
10/791,566
03/02/2004

-26-

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EVIDENCE APPENDIX

NONE

Axel E. Elfner
10/791,566
03/02/2004

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RELATED PROCEEDINGS APPENDIX

NONE